IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9041

JAMES JOHN LAMB, *Appellant*

v.

ROBERT P. PATTERSON, et al., *Appellees*

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX

Filed Oct 28 1944

In the District Court of the United States
For the District of Columbia

Civil Action No. 24628

JAMES JOHN LAMB, 717 Davenport Bank Building, Davenport, Iowa, *Plaintiff*,

v.

HENRY L. STIMSON, Secretary of War of the United States, Washington, D. C., and J. A. ULIO, The Adjutant General of the United States Army, Washington, D. C., *Defendants*.

Amended Complaint for Declaratory Judgment and for Supplemental Relief

Plaintiff, James John Lamb, for amended cause of action against defendants, respectfully asserts:

1. That he is a citizen of the United States and a resident of the City of Davenport in the State of Iowa and that he has been such a citizen and such a resident continuously for more than fifty years; that his name sometimes is written James J. Lamb and also sometimes is written James Lamb.

2. That defendant, Henry L. Stimson, is the Secretary of War of the United States and defendant, J. A. Ulio, is the Adjutant General of the United States Army, with their residences and official places of business in the City of Washington in the District of Columbia; that in their official capacities they have control and supervision over the granting of and the authority to grant discharges, to inducted and enlisted men, from the Military Service of the United States, including the Army of the United States.

3. That pursuant to the provisions of the Act of Congress of May 18, 1917, which act is known as the Selective Draft Act of 1917 and also is called the Selective Service Law of

1917, and the public resolutions and acts amendatory thereof and Selective Service Regulations prescribed by the President of the United States, plaintiff registered at Davenport, Iowa and was under the jurisdiction of Local Board for Division No. 1, City of Davenport, Iowa; that his numbers in the draft were—Order No. 260 and Serial No. 1.

4. That the said Local Board for Division No. 1, City of Davenport, Iowa, at all times herein mentioned was acting for the War Department of the United States and its acts were under authority of the then Secretary of War of the United States.

5. That in the year 1918, after being physically examined by order of said Local Board for Division No. 1, City of Davenport, Iowa, plaintiff was by said Local Board, in writing, notified that as a result of said physical examination he had been found qualified for Military Service and was subject to call when the Government had need for his services.

6. That in writing, on November 9, 1918, by said Local Board for Division No. 1, City of Davenport, Iowa, plaintiff was ordered to report to said Local Board at Davenport, Iowa on November 11, 1918 at nine o'clock A.M. for immediate military duty; that a copy of said order is attached hereto, is marked Exhibit "A" and hereby is made part hereof.

3 7. That plaintiff obeyed said Exhibit "A" order and on November 11, 1918 at 9 o'clock A.M., at Davenport, Iowa, he reported in person to said Local Board for Division No. 1 of the City of Davenport, Iowa and by said Local Board on November 11, 1918, at Davenport, Iowa, he was accepted for general military service and by said Local Board, on the morning of November 11, 1918, at Davenport, Iowa, he was lawfully inducted into the Army of the United States.

8. That thereafter, on the morning of November 11, 1918, at Davenport, Iowa, there was delivered to plaintiff by

said Local Board, for Division No. 1, City of Davenport, Iowa, a written warrant of appointment as leader of the contingent of drafted men of which he was a member and he was notified orally by said Local Board that he was a soldier in the Army of the United States and that said warrant of appointment as leader vested him with power and authority to maintain good order among the men in the contingent and he was also notified orally by said Local Board that he was charged with the duty and responsibility of maintaining proper discipline in the contingent of men so as to not bring reproach to himself or to the men in the contingent in his charge, or to the Military Service of the United States; that a copy of said written warrant of appointment as leader is attached hereto, marked Exhibit "B" and hereby is made part hereof.

9. That thereafter, on the morning of November 11, 1918, at Davenport, Iowa, by said Local Board, for Division No. 1, City of Davenport, Iowa, plaintiff orally was ordered to assemble the contingent of drafted men in his charge and proceed with said men to Camp Dodge, Iowa for attachment to such branch or division of the Military Service of the United States as might be required and found necessary by the War Department; that in obedience to said order he did assemble the contingent of drafted men on the morning of November 11, 1918, at Davenport, Iowa and proceed with the men in the contingent from the headquarters of said Local Board to entrain for Camp Dodge, Iowa.

10. That thereafter, at Davenport, Iowa, on November 11, 1918, before actually entraining for Camp Dodge, Iowa, plaintiff was notified orally by said Local Board, for Division No. 1, City of Davenport, Iowa, that he would not entrain on November 11, 1918 for Camp Dodge, Iowa because of cancellation of draft calls and induction orders and also was informed orally by said Local Board that he still was a soldier in the Army of the United States, subject to military orders and to laws and regulations governing the said

Army of the United States, and by said Local Board, for Division No. 1, City of Davenport, Iowa, was ordered orally to hold himself in readiness at all times to obey further orders and also was informed orally by said Local Board that he would receive by mail, in a few days, from said Local Board, a written notification; that as ordered by said Local Board he did hold himself in readiness at all times from November 11, 1918 to November 14, 1918, both dates inclusive, to obey any orders given him by proper Military authorities of the United States.

11. That on November 15, 1918, in writing, by mail from said Local Board, for Division No. 1, City of Davenport, Iowa, plaintiff received notice that by order of the Provost Marshal General acting under the instructions of the President all orders of induction into the Army had been cancelled and that all registrants who were inducted into the Army, but not entrained, were discharged from the Army and that the cancellation of such induction orders, in cases of registrants who were inducted, had the effect of an honorable discharge from the Army; that a copy of said written notice is attached hereto, is marked Exhibit "C" and hereby is made part hereof.

12. That, as one inducted into the Army but not entrained, plaintiff was discharged from the Army of the United States, at Davenport, Iowa, by order of the President, through the Provost Marshal General, dated November 11, 1918, which order was set out in and transmitted by Telegram Number B 4292; that said order of the President did not discharge plaintiff from the draft; that a copy of said order of the President is attached hereto, is marked Exhibit "D" and hereby is made part hereof.

13. That thereafter there was issued to plaintiff at Camp Dodge, Iowa, by an officer of the Military Service of the United States acting under and by authority of the then Secretary of War, and mailed to plaintiff from Camp Dodge, Iowa, and received by him on or about January 26, 1919, at Davenport, Iowa, a Certificate of Discharge from Draft,

Form 638-1 A.G.O., dated November 14, 1918; that a copy of said Discharge from Draft certificate is attached hereto, is marked Exhibit "E" and hereby is made part hereof.

14. That accompanying said Exhibit "E" certificate in the mail was a War Quartermaster's check drawn on the Treasurer of the United States for the amount of $4.00, payable to the order of plaintiff, which was the pay of plaintiff for his servics with the Army of the United States for the period from November 11, 1918 to November 14, 1918, both dates inclusive, at the rate of pay then prevailing for non-commissioned enlisted men in the Military Service of the United States and was his Final Pay; that a copy of said check is attached hereto, is marked Exhibit "F" and hereby is made part hereof.

15. That plaintiff served as a soldier in the Army of the United States from November 11, 1918 to November 14, 1918, both dates inclusive, and that his said service was honest and faithful and his conduct was such as to warrant his reenlistment; that he never was rejected for or from Military Service because of physical unfitness or physical disability; that he was physically and in every respect qualified for Military Service; that he was discharged from the Army solely because of the signing of the Armistice between the United States and Germany; that he could not lawfully be separated from the Army without receiving a proper notice of discharge and that the written notice he received, which is Exhibit "C," stated that the cancellation of his induction order, after he was inducted into the Army and before he entrained for Camp Dodge, Iowa, had the effect of an honorable discharge from the Army; that under the actual facts and under Army regulations in force and effect on November 11, 1918, the Discharge from Draft on Form 638-1 A.G.O. issued to him was not and is not the proper certificate of Discharge from the Army of the United States to which he was and is lawfully entitled.

16. That in good faith, as a person inducted into the Army but not entrained, plaintiff at all times since Novem-

ber 15, 1918 has relied on and still relies on the statement in Exhibit "C" that the cancellation of his induction order after his induction "has the effect of an honorable
7 discharge from the army"; that in good faith at all times since November 11, 1918 he has relied on and still relies on the statement in Exhibit "D" that he is "discharged from the Army"; that in good faith since November 11, 1918 he has represented himself as an honorably discharged soldier of the Army of the United States; that as an honorably discharged soldier of the War with Germany, commonly called World War I, and as a resident of Scott County in the State of Iowa, he annually, under oath, applied to the public taxing authorities of Scott County, Iowa for a tax exemption and until the year 1940 was allowed by such public authorities an exemption from taxation under a law in force and effect in the State of Iowa, which law granted such tax exemption on "the property not to exceed Five Hundred Dollars in actual value of any honorably discharged soldier, sailor, marine or nurse of the War with Germany"; that on August 26, 1941, as an honorably discharged soldier of the War with Germany, he filed, in writing, in the office of the Auditor of Scott County in the State of Iowa his verified claim for such tax exemption for the year 1941; that on or about October 1, 1941 the said claim for tax exemption was denied by the Board of Supervisors of Scott County, Iowa; that the members of the said Board of Supervisors in the year 1941 claimed that he was not a soldier and that he was not honorably discharged from the Army but was a person only discharged from the draft; that such assertions were urged by the said Board of Supervisors for the first time in the year 1941; that the first knowledge he had of there being any question as to his being an honorably discharged soldier of the Army of the United States came to him in the year 1941 as hereinbefore stated.

8 17. That on October 23, 1941 in the Scott County Iowa District Court, at Davenport, Iowa, as plaintiff,

he brought an action against the members of the Board of Supervisors of Scott County, Iowa as defendants, alleging that he was an honorably discharged soldier of the War with Germany and also alleging that in denying his claim for tax exemption the said defendants, as members of the Scott County Iowa Board of Supervisors, acted illegally and unlawfully and that he had no adequate remedy at law; that in said suit he asked the Scott County Iowa District Court to decree that he was an honorably discharged soldier of the War with Germany and that he was entitled to said tax exemption; that the defendants as members of the Board of Supervisors of Scott County Iowa filed answer in said suit denying all of the allegations of plaintiff's petition; that the said suit was heard, argued and taken under advisement by the Scott County Iowa District Court; that on May 4, 1942 the Scott County Iowa District Court filed its "Order and Decree" in which it ordered, adjudged and decreed that "plaintiff James J. Lamb is an honorably discharged soldier of the War with Germany which war frequently is called World War I."

18. That within the time allowed by the laws of the State of Iowa the said defendants, as members of the Board of Supervisors of Scott County Iowa appealed from the said order and decree of the Scott County Iowa District Court to the Supreme Court of the State of Iowa; that the Supreme Court of the State of Iowa on March 9, 1943 delivered and filed in said case a majority opinion and a dissenting opinion; that the said majority opinion of

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the Iowa Supreme Court reversed the order and decree of the District Court of the State of Iowa in and for Scott County dated May 4, 1942; that the opinions of the Iowa Supreme Court in said case of *Lamb* vs. *Kroeger* are reported in 8 N.W. (2nd) commencing on page 405; that in its said majority opinion the Iowa Supreme Court in reversing the District Court, stated—"we feel there is a serious doubt upon the question whether the appellee is an honorably discharged soldier of the War with Germany

within the meaning of Section 6946 Code of Iowa 1939"; that plaintiff applied to the Supreme Court of the State of Iowa for a rehearing of said case but that such rehearing was denied on or about June 15, 1943.

19. That on November 2, 1943 plaintiff applied to the Adjutant General of the United States Army requesting that a certificate of honorable discharge from the Army of the United States be granted to him and said request was denied on November 20, 1943; that by letter dated January 13, 1944 he requested of the Adjutant General of the United States Army a reconsideration of the said November 20, 1943 action of the Adjutant General; that on or about February 29, 1944 he was notified in writing by the Adjutant General that the office of the Adjutant General of the Army adhered to its former decision of November 20, 1943 denying his claim for a certificate of honorable discharge from the Army of the United States; that then plaintiff instituted this action.

20. That the controversy between plaintiff and defendants is actual and is of a justifiable nature; that plaintiff has been diligent at all times since first obtaining knowledge in the year 1941 that there was any question as to his status as an honorably discharged soldier of the Army of the United States; that prior to the year 1941 his status as an honorably discharged soldier of the Army of the United States was unquestioned; that prior to the year 1941 he had no knowledge that there was any question as to his being an honorably discharged soldier of the Army of the United States; that diligently and since the year 1941 he instituted the actions and took the steps hereinbefore stated to have his status determined and to have issued to him the certificate of honorable discharge from the Army of the United States to which he is lawfully entitled; that defendants still refuse to issue such certificate to plaintiff; that defendants have in no way been prejudiced by lapse of time.

Wherefore plaintiff prays the Court—

I. For a judgment declaring—

(a) That he served as a soldier in the Army of the United States from November 11, 1918 to November 14, 1918, both dates inclusive, and that during said period of time his conduct was such as to warrant his re-enlistment in the Army and that his service was honest and faithful; and

(b) That he never was rejected for Military Service because of physical unfitness; and

(c) That under honorable conditions he was discharged from the Army of the United States by order of the President, which order is dated November 11, 1918 and is Telegram Number B 4292; and

(d) That he is an honorably discharged soldier of the War with Germany (World War I); and

(e) That when he was separated from the Military Service of the United States he was entitled lawfully to a certificate affirmatively showing on its face the fact that his service in the Army was honest and faithful and that he was honorably discharged from the Military Service of the United States by reason of the said order of the President dated November 11, 1918; and

II. As further relief plaintiff prays—

(f) That a mandatory injunction issue from this Court directed to the defendants commanding them to grant and issue to plaintiff a proper and lawful discharge from the Army of the United States as by law provided; and

(g) That the Court grant such other and further relief as it may find just and proper in the premises.

SAMUEL T. ANSELL,
Attorney for Plaintiff,
Tower Building,
Washington, D. C.

Of Counsel:

MAHLON C. MASTERSON,
Tower Building,
Washington, D. C.

ROGER ROBB,
Tower Building,
Washington, D. C.

ANSELL AND ANSELL,
Tower Building,
Washington, D. C.

LANE & WATERMAN,
Davenport Bank Building,
Davenport, Iowa

Soldiers & Sailors Discharge Record
Date July 17 A.D., 1941
Book No. 2nnn Page 584
Benj Zaechler Recorder.

Order of Induction into Military Service of the United States.

THE PRESIDENT OF THE UNITED STATES,

To James Joshua Lacie
(Christian name) (Surname)

Order Number 250 Serial Number _____

Greeting: *Having submitted yourself to a local board composed of your neighbors for the purpose of determining the place and time in which you can best serve the United States in the present emergency, you are hereby notified that you have now been selected for immediate military service.*

You will, therefore, report to the local board named below at 56 Davenport Savings Bank Bldg., (Place of reporting) *at* 9 (Hour of reporting) m., *on the* 11th *day of* November, 19 41, *for military duty.*

From and after the day and hour just named you will be a soldier in the military service of the United States.

[signature]

Member of Local Board for [illegible]

Report to Local Board for [illegible]

Date _____

Exhibit "A"

Sailors & Sailors Discharge Record
Date July 17 A.D. 1941
Book No. Three Page 554
Benj Faesbeler Recorder.

TO REGISTRANTS OF LOCAL BOARDS ONE AND TWO OF THE CITY OF DAVENPORT INCLUDED IN OUTSTANDING CALLS

James John Last
1818 W. 3rd St
Davenport, Iowa.

By order of the Provost Marshal General acting under the instruction of the President of the United States, all outstanding calls for the army, general and special, and orders for individual induction into the army, have been cancelled, and all registrants who were inducted but not entrained under such calls are discharged from the army.

The foregoing cancellation and discharge does not affect any call or competent order for induction into the navy or marine Corps. All registrants whose calls are cancelled, or who are discharged, revert to their status as registrants and are subject to the provisions of the Selective Service Law like other registrants, and are subject to future calls. Accordingly all registrants who received notices to appear for induction under such calls, or who appeared and were inducted but not entrained, are notified that the undersigned Boards have cancelled all such notices and orders of induction, and that such cancellation in cases of registrants who were inducted has the effect of an honorable discharge from the army.

DATED: NOVEMBER 14, 1918.

LOCAL BOARD DIVISION NO. 1, CITY OF DAVENPORT, IOWA.

LOCAL BOARD DIVISION NO. 2, CITY OF DAVENPORT, IOWA.

Exhibit "C"

DISCHARGE FROM DRAFT

Jan. 11 1923
552
Scott Co.

To all whom it may concern:

This is to Certify. That James John Lamb
(Christian name) (Surname)
is hereby DISCHARGED from the military service of the UNITED STATES by order of the President, dated November 11, 1918.

Said James John Lamb
was inducted into the service from the jurisdiction of the Local Board for
Iowa No. 1 Davenport Iowa
on the 11th day of November, 191 .

While this certificate discharges the person named herein from his present obligation to serve in the Army, it does not operate as a permanent bar to his subsequent entrance into the military service. Under Section 5 of the Act of May 18, 1917, all registered persons remain subject to the draft unless exempted or excused as in that Act provided. Therefore, this discharge does not excuse the holder from obedience to the process of Exemption Boards.

Given at Camp Funston, this 14th day of Nov. 191 .

By [command / order] of Major General Jesse M. Carter

Adjutant.

Asst Camp Personnel Adj
(Rank)

* Strike out word not applicable.

Form 32, Office A. G. O.
Rev. 5-18.

Exhibit "E"

Exhibit F

17 Filed Oct 28 1944 Charles E. Stewart, Clerk

Copy Copy

War Camp Dodge, Iowa Jan. 25, 1919 15259

Quartermaster

Treasurer of the United States 15-51

(Seal) Pay To The

Order Of Jaines J. Lamb $4.00

Four & No/100 . . . . . Dollars

Object for Which drawn

Vo. No. 3500

Final Pay

/s/ A. A. PADMORE

Quartermaster Corps, N.A. 28476

Exhibit "F"

(Endorsement)

Form Approved By The
Comptrolier Of The Treasury
January 27, 1913.

This check must be indorsed in ink or indelible pencil on the line below by the person in whose favor it is drawn, and the name must be spelled exactly the same as it is on the face of the check.

If indorsement is made by mark (X) it must be witnessed by two persons who can write, giving their places of residence in full.

. . . . . .

(Sign on this line.)

. . . . . .

18 Filed Jan 10 1945

Motion to Dismiss

Comes now the defendants in the above entitled cause and respectfully moves this Court to dismiss the above entitled cause for the following reasons:

1. The complaint on its face shows that the plaintiff is barred from relief by laches.

2. The type of certificate to be given under such circumstances is a matter solely within the discretion of the Secretary of War.

3. The complaint fails to state a cause of action upon which relief may be granted.

4. There is no justiciable controversy between the plaintiff and the defendant.

EDWARD M. CURRAN,
United States Attorney.

DANIEL B. MAHER,
Assistant United States Attorney.

19 Filed May 1 1945

Order

Upon consideration of the motion to dismiss filed by the defendants in the above entitled cause, the Court being fully advised in the matter, and upon the ground that the complaint fails to state a cause of action upon which relief may be granted, it is by this Court this 1st day of May, 1945,

Adjudged, Ordered and Decreed, That the motion to dismiss be, and the same hereby is granted, and the complaint be and the same hereby is dismissed.

MATTHEW F. McGUIRE
Justice

No objection as to form:

ROGER ROBB
Attorney for Plaintiff

Presented by:

DANIEL B. MAHER,
Assistant United States Attorney.

21 Monday, February 4th, A. D. 1946

The Court met pursuant to adjournment. Present: Honorable D. Lawrence Groner, Chief Justice, Harold M. Stephens, Henry W. Edgerton, Bennett Champ Clark, Wilbur K. Miller and E. Barrett Prettyman, Associate Justices.

Before Honorable HENRY W. EDGERTON, WILBUR K. MILLER, and E. BARRETT PRETTYMAN, Associate Justices

* * * * *

No. 9041. January Term, 1946

JAMES JOHN LAMB, APPELLANT

vs.

ROBERT P. PATTERSON, ET AL., APPELLEES.

Argument commenced by Mr. Roger Robb, attorney for appellant, continued by Mr. Daniel B. Maher, attorney for appellee, and concluded by Mr. Roger Robb.

* * * * *

22 United States Court of Appeals, District of Columbia

No. 9041

JAMES JOHN LAMB, APPELLANT

v.

ROBERT P. PATTERSON, SECRETARY OF WAR OF THE UNITED STATES, ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Argued February 4, 1946.—Decided March 25, 1946

Mr. Roger Robb, with whom Messrs. Samuel T. Ansell and Mahlon C. Masterson were on the brief, for appellant.

Mr. Daniel B. Maher, Assistant United States Attorney, with whom Messrs. Edward M. Curran, United States Attorney, and Sidney S. Sachs, Assistant United States Attorney, were on the brief, for appellees. Mr. Charles B. Murray, Assistant United States Attorney, also entered an appearance for appellees.

Before EDGERTON, WILBUR K. MILLER, and PRETTYMAN, JJ.

WILBUR K. MILLER, J.: This appeal presents for review an order of the District Court of the United States for the District of Columbia which granted the appellees' motion to dismiss the appellant's complaint. The suit was filed by the appellant to obtain a judicial ruling that he is an honorably discharged soldier of World War I, and a mandatory direction to the appellees to issue to him a certificate of honorable discharge as such.

The factual situation which gave rise to the controversy stretches back more than a quarter of a century. The appellant, James John Lamb, a resident of Davenport, Iowa, was notified on November 9, 1918, by his local draft board that he had been selected for immediate military service. He was ordered to report to the board at 9:00 a. m. on November 11 for military duty. The notice which he received informed Lamb that "from and after the day and hour just named you will be a soldier in the military service of the United States." The appellant reported at the designated time and place and was then notified orally by the local board that he was a soldier in the Army of the United States. By a written warrant of appointment, he was made the leader and special police officer of a contingent of drafted men during the journey from Davenport to Camp Dodge. Pursuant to an oral order given to him later on the morning of November 11, Lamb assembled
23 his contingent and proceeded with it from the office of the local board for the purpose of entraining for the camp.

Before the appellant had actually boarded a train, however, he was told orally that because of the armistice with Germany draft calls had been cancelled. But he was also told that he was still a soldier, subject to military orders and to laws and regulations governing the army, and that he must hold himself in readiness at all times to obey further orders.

On November 15, 1918, Lamb received by mail from his local board a communication dated November 14, 1918, the text of which is shown in the margin.[1] This action was taken by the local board

[1] "By order of the Provost Marshal General acting under the instruction of the President of the United States, all outstanding calls for the army, general and special, and orders for individual induction into the army, have been cancelled, and all registrants who were inducted but not entrained under such calls are discharged from the army.

"The foregoing cancellation and discharge does not affect any call or competent order for induction into the navy or marine corps. All registrants whose calls are cancelled, or who are discharged, revert to their status as registrants and are subject to the provisions of the Selective Service Law like other registrants, and are subject to future calls. Accordingly all registrants who received notices to appear for induction under such calls, or who appeared and were inducted but not entrained, are notified that the undersigned Boards have cancelled all such notices and orders of induction, and that such cancellation on cases of registrants who were inducted has the effect of an honorable discharge from the army."

pursuant to an order of the President, issued through the Provost Marshal General, dated November 11, 1918, which contains the following language:

"The President further directs that all registrants who are already inducted into the Army under these calls because of the fact that the day and hour specified in form ten twenty-eight or entered in column twenty-four of the classification list have arrived, but who have not been actually entrained for a mobilization camp, shall be; and that they are hereby, discharged from the Army."

On or about January 26, 1919, Lamb received a certificate styled "Discharge from Draft" which had been issued at and mailed from Camp Dodge and which was dated as of November 14, 1918. The text of this document is set out in the margin.[2] Accompanying it was a Quartermaster's check for $4.00 bearing the notation "Final Pay," which was in payment for service with the Army for the period from November 11, 1918, to November 14, 1918, both dates inclusive. From that time on Lamb represented himself as having been honorably discharged from the Army of the United States.

24 A statute of Iowa grants tax exemption on "the property not to exceed Five Hundred Dollars in actual value of any honorably discharged soldier, sailor, marine or nurse of the War with Germany." After the enactment of this exemption Lamb annually applied to the taxing authorities of Scott County, Iowa, the place of his residence, for exemption thereunder, and until the year 1940 each annual application was granted by those authorities. But when he presented his verified claim for the statutory exemption for the year 1941, the Board of Supervisors of Scott County claimed that he had not been a soldier, that he had not been honorably discharged from the army, and that his status was merely that of one who had been discharged from the draft.

Immediately following this occurrence, Lamb sued the members of the Board of Supervisors in the state court at Davenport, alleging that he was an honorably discharged soldier of the war with Germany and that the supervisors had acted illegally in denying him the tax exemption. He prayed that the court declare

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[2] "To all whom it may concern:
"This is to Certify, That James John Lamb is hereby DISCHARGED from the military service of the UNITED STATES by order of the President, dated November 11, 1918.
"Said James John Lamb was inducted into the service from the jurisdiction of the Local Board for Div. #1, Davenport, Iowa, on the 11th day of November 1918.
"While this certificate discharges the person named herein from his present obligation to serve in the Army, it does not operate as a permanent bar to his subsequent entrance into the military service. Under Section 5 of the Act of May 18, 1917, all registered persons remain subject to the draft unless exempted or excused as in that Act provided. Therefore, this discharge does not excuse the holder from obedience to the process of Exemption Boards."

him to have been honorably discharged and, therefore, entitled to the tax exemption. In May 1942 the Scott County District Court adjudged that "James J. Lamb is an honorably discharged soldier of the War with Germany which frequently is called World War I." Thereafter the Board of Supervisors appealed to the Supreme Court of Iowa and on March 9, 1943, that court reversed, a majority and a dissenting opinion being filed. In the course of the majority opinion it was said, "we feel there is a serious doubt upon the question whether the appellee is an honorably discharged soldier of the War with Germany within the meaning of Section 6946 Code of Iowa 1939."[3] A rehearing was denied on June 15, 1943.

On November 2, 1943, the appellant applied to the Adjutant General of the United States Army for a certificate of honorable discharge. The request was denied on November 20, 1943. Lamb endeavored to get the Adjutant General to reconsider, but that official finally informed him on February 29, 1944, that he adhered to his original denial of the claim. Lamb then filed suit in the District Court of the United States for the District of Columbia against Henry L. Stimson, then Secretary of War, and J. A. Ulio, then The Adjutant General of the United States Army. In his complaint he recited in detail the facts which we have summarized, and prayed that the court declare that he had been a soldier in the Army of the United States from November 11, 1918, to November 14, 1918, both dates inclusive, and that during that period his conduct was such as to warrant his reenlistment in the army and that his service was honest and faithful; that he was not rejected because of physical unfitness; that he is an honorably discharged soldier of the war with Germany and that he is entitled to a certificate showing that his service in the army was honest and faithful; and that he was honorably discharged from military service by reason of the order of the President, dated November 11, 1918. He further prayed that the court mandatorily direct the defendants to issue to him "a proper and lawful discharge from the Army of the United States as by law provided. . . ."

The District Court granted the defendants' motion to dismiss on the ground that the complaint failed to state a cause of action upon which relief could be granted. This appeal followed.

25 The appellees, who were defendants below, argue that the certificate of Discharge from Draft was in accordance with law and regulation; that the issuance of an honorable discharge certificate is a discretionary act which cannot be controlled by mandamus; and that the appellant was guilty of laches.

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[3] Lamb v. Kroeger, 8 N. W. (2d) 405.

The first question, therefore, to which we address ourselves is whether the certificate of Discharge from Draft, Form No. 638–1, A. G. O., which was issued to the appellant, was in accordance with law and regulation. There can be no question that Lamb was an enlisted man, lawfully inducted into the military service of the United States. He had received an order of induction, which informed him that from and after 9:00 a. m., November 11, 1918, he would be a soldier in the military service of the United States. The President's order of November 11, 1918, recites that men who have already been inducted into the army because of the arrival of the day and hour specified in the order of induction, but who have not been actually entrained for a mobilization camp, "are hereby discharged from the Army." The Discharge from Draft reads that Lamb "is hereby discharged from the military service of the United States." He was paid for four days of military service.

It is provided by the 108th Article of War, Act of August 29, 1916, ch. 418, 39 Stat. 668, that "No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs, or by the commanding officer when no such field officer is present. * * *" By the Selective Draft Act of May 18, 1917, ch. 15, 40 Stat. 70, persons drafted into the service of the United States were made subject to the laws and regulations governing the Regular Army, hence the quoted portion of the 108th Article of War applied to the appellant.

The Secretary of War was authorized by the Act of June 8, 1872 (17 Stat. 283, 5 U. S. C. A. 22) to promulgate regulations providing for such forms of discharge as he thought reasonably required. Under this authority, the Secretary of War promulgated paragraph 150 of the Army Regulations providing for three classes of discharge certificates: honorable discharge, discharge, and dishonorable discharge.[4]

This regulation continued to be the sole pronouncement of the Secretary of War concerning forms of certificates of dis-
26 charge until the passage of the Selective Draft Act made it necessary, in official opinion, to provide other forms of certificates. By a regulation dated January 12, 1918, certificates

[4] Paragraph 150 of the Army Regulations is as follows:

"150. Blank forms for discharge and final statements will be furnished by the Adjutant General's Department and will be retained in the personal custody of company commanders. Discharge certificates will be used in the discharge of enlisted men and for no other purpose, and will be of three classes: For honorable discharge, for discharge, and for dishonorable discharge.

"They will be used as follows:

"1. The blank for honorable discharge, when the soldier's conduct has been such as to warrant his reenlistment and his service has been honest and faithful.

"2. The blank for dishonorable discharge, for dishonorable discharge by sentence of a court martial or a military commission.

"3. The blank for discharge when the soldier is discharged except as specified under sections 1 and 2 of this paragraph (C. A. R. Nos. 14 and 34)."

called "Discharge from Draft" were authorized for those who were inducted but failed to pass the physical examination at the place of mobilization. This regulation has no application to the case before us, as the appellant was not rejected for physical unfitness. As far as the appellant was concerned, at the time of his separation from the military service, official regulations authorized only the three forms of discharge provided for by paragraph 150 of the Army Regulations. Hence, the certificate of discharge issued to the appellant should have been on one of those three forms; and that which would have been appropriate should have been determined under paragraph 150 of the Regulations.

The appellees place reliance on a regulation promulgated December 4, 1918, which provides for registrants who, although inducted by local boards, had not arrived at a place of mobilization when they were discharged under the President's order of November 11, 1918. By this regulation, there was to be issued to such persons "a discharge certificate on a new blank form (Form No. 638–1, A. G. O.)." The certificate of discharge which was received by the appellant was on this form. It was mailed to him from Camp Dodge, and was received by him at Davenport, Iowa, on or about January 26, 1919, although it purports to have been issued at Camp Dodge on November 14, 1918.

It should be noted that the regulation of December 4, 1918, refers to Form No. 638–1 A. G. O., as "a new blank form." Such a certificate of discharge, not having been officially authorized prior to December 4, 1918, should not have been issued to soldiers who were discharged prior to that date and who were entitled, under law and regulation, to the appropriate form of the three kinds of certificates authorized by paragraph 150 of the Army Regulations. It is obvious here that Lamb's certificate was antedated to November 14, 1918, by the officer who actually issued it in January 1919. That officer was the first to make the official error which has been persisted in by the appellees since that time. It is quite clear that the appellant was and is entitled to a certificate of honorable discharge,[5] unless it was within the official discretion of the Secretary of War, on November 14, 1918, to issue to him some other form of discharge certificate, or unless his claim to relief in this action is barred by laches.

We proceed to the second contention of the appellees which is that the issuance of an honorable discharge certificate is a discretionary act and not subject to control by mandamus. It is urged upon us that it rests in the sound discretion of the Secretary of War whether to issue a certificate of honorable discharge to a soldier separated from the service, and that we should not

[5] Davis v. Woodring, 111 F. (2d) 523, 72 App. D. C. 83.

substitute our judgment for that of the Secretary as to the quality of appellant's service and his character as exhibited during that service.

It must be conceded that the determination originally of the several forms of certificates of discharge was a proper exercise of the executive authority of the Secretary; but, having exercised that authority and having defined the three types of certificates to be issued, and having by regulation established
27 standards to govern the selection of the proper form to be issued to each discharged soldier, the executive authority of the Secretary had been fully exercised, and the duty of the army officer at Camp Dodge in issuing a certificate of discharge to the appellant was simply ministerial, as though the regulation had been a statute.[6] That officer did not have, and indeed the Secretary himself would not have had, the right arbitrarily to issue to Lamb any form of discharge certificate other than that which was appropriate to his status according to the standards set up in paragraph 150 of the Army Regulations. True it is that the Secretary again could exercise his executive authority to provide for additional and different forms of discharge, as he did by the regulations of January 12, 1918, and again on December 4, 1918; but, once standards are erected by regulation, it is merely ministerial to observe them. Consequently, it is incorrect to say, as the appellees do, that whether the appellant is entitled to a certificate of honorable discharge rests in the sound discretion of the Secretary of War.[7]

The court does not substitute its judgment for that of the Secretary as to the quality of appellant's service and his character as exhibited during that service. The Secretary determined, by paragraph 150 of the Army Regulations, that the blank for honorable discharge must be used "when the soldier's conduct has been such as to warrant his reenlistment and his service has been honest and faithful." The appellant's complaint, against which the appellees' motion to dismiss was leveled, alleges that the appellant's conduct was such as to warrant his reenlistment and that his service had been honest and faithful. The motion to dismiss has the effect of admitting these facts. So, for the purpose of considering the motion to dismiss, it is the Secretary's considered judgment, expressed in paragraph 150, that Lamb is entitled to an honorable discharge.

Reid v. United States, 161 Fed. 469, cited by the appellees, was decided by a district court in New York in 1908. In that opinion the court said that the exact method of a soldier's discharge and the kind of character that should be given him, not being regulated

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[6] Arizona Grocery Co. v. A. T. & S. F. Ry. Co., 284 U. S. 370, 386.
[7] Miguel v. McCarl, 291 U. S. 442.

by statute, necessarily must be left to the discretion of the executive officer having power to grant some kind of discharge; and that army regulations do not bind the Secretary of War who promulgates them. We do not regard the citation as authority here for several reasons. Reid was discharged without honor for having participated in a riot, and filed suit to recover the pay and emoluments which would have accrued to him from the date of his discharge to the expiration of his three-year term of enlistment. It will thus be seen that the statement in the opinion to which we have referred was *obiter dictum*. Reid's writ of error was dismissed by the Supreme Court on procedural grounds,[8] and no reference was made to the gratuitous statement of the district court cited by the appellees here in support of their position. Furthermore, the statement is not in accord with the view of this court expressed in Davis v. Woodring, supra, and we do not regard it as sound.

28 It remains only to consider whether the remedy sought by the appellant is barred by laches, as argued by the appellees. Twenty-five years elapsed from the time the appellant received his discharge certificate until he first attempted to obtain a certificate of honorable discharge, as the appellees pointed out. But laches is not like limitation, a mere matter of time. Although the appellant was discharged on November 14, 1918, and received a certificate of Discharge from Draft on January 25, 1919, he was told on November 15, 1918, by his local board that the Presidential order of November 11, 1918, discharging from the army all registrants who had been inducted but not entrained, had "the effect of an honorable discharge from the army."[9] Until 1941, the appellant had no basis for supposing that there was any doubt concerning his status as an honorably discharged soldier. When that status was challenged for the first time, he manifested extraordinary diligence in asserting his rights. Moreover, the appellees do not claim that there has been any change of condition or relations since 1918 because of which it would be an injustice to them to permit the appellant to assert his rights now. Bearing in mind the essential elements of laches,[10] it is our opinion that the appellant's action is not barred by that defense.

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[8] 211 U. S. 529.

[9] Note 1 supra.

[10] In Galliher v. Cadwell, 145 U. S. 368, 372, will be found the following discussion of laches by the Supreme Court:

"The cases are many in which this defense has been invoked and considered. It is true, that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in a proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in condition or relations during this period of delay, it would be an injustice to the latter to permit him to now assert them."

Since it is our view that in his complaint the appellant pleaded facts which, if sustained by proof, entitled him to the relief sought, it follows that the District Court erred in granting the appellees' motion to dismiss.

Reversed.

29 United States Court of Appeals for the District of Columbia

No. 9041. January Term, 1946

JAMES JOHN LAMB, APPELLANT

vs.

HENRY L. STIMSON, SECRETARY OF WAR OF THE UNITED STATES, ET AL., APPELLEES

United States Court of Appeals for the District of Columbia. Filed Mar. 25, 1946. Joseph W. Steward, Clerk.

Appeal from the District Court of the United States for the District of Columbia

Before EDGERTON, WILBUR K. MILLER, *and* PRETTYMAN, JJ.

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

Per MR. JUSTICE WILBUR K. MILLER.

Dated March 25, 1946.

United States Court of Appeals for the District of Columbia

No. 9041. January Term, 1945

JAMES JOHN LAMB, APPELLANT

vs.

HENRY L. STIMSON, ET AL., APPELLEES

Order

On consideration of appellant's motion to substitute Robert P. Patterson, Secretary of War, as party appellee herein in
30 the place and stead of Henry L. Stimson, Secretary of War, resigned, and it appearing to the Court that counsel for Robert P. Patterson, Secretary of War, consents thereto, It is

Ordered by the Court that Robert P. Patterson, Secretary of War, be, and he is hereby, substituted as party appellee herein in the place and stead of Henry L. Stimson.

PER CURIAM.

Dated November 2, 1945.

United States Court of Appeals for the District of Columbia. Filed Nov. 2, 1945. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia

No. 9041. January Term, 1946

JAMES JOHN LAMB, APPELLANT

v.

ROBERT P. PATTERSON, ET AL., APPELLEES

Order

On consideration of appellant's motion to substitute Edward F. Witsell, The Adjutant General, as party appellee in the place and stead of appellee J. A. Ulio, his predecessor as Adjutant General, and it appearing that Edward F. Witsell, The Adjutant General, consents to this motion to substitute, It is

Ordered by the Court that Edward F. Witsell, The Adjutant General, be, and he is hereby, substituted as party appellee in the place and stead of appellee J. O. Ulio.

PER CURIAM.

Dated March 30, 1946.

United States Court of Appeals for the District of Columbia. Filed Mar. 30, 1946. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia

No. 9041

JAMES JOHN LAMB, APPELLANT

v.

ROBERT P. PATTERSON, SECRETARY OF WAR OF THE UNITED STATES, AND EDWARD F. WITSELL, THE ADJUTANT GENERAL OF THE UNITED STATES ARMY, APPELLEE

United States Court of Appeals for the District of Columbia. Filed June 4, 1946. Joseph W. Stewart, Clerk.

31 *Designation of record*

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Appendix to appellant's brief.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. Order substituting Robert P. Patterson for Henry L. Stimson as Secretary of War of the United States, Appellee.
6. Order substituting Edward F. Witsell for J. A. Ulio as The Adjutant General of the United States Army, Appellee.
7. This designation.
8. Clerk's certificate.

(S) J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

Service of copy of the above designation of record in the above-entitled case is hereby acknowledged this 4th day of June, 1946.

(S) SAMUEL T. ANSELL,
Of Counsel for Appellant.

United States Court of Appeals for the District of Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 32, constitute a true copy of the joint appendix to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for the appellees in the case of:

JAMES JOHN LAMB, APPELLANT

vs.

ROBERT P. PATTERSON, SECRETARY OF WAR OF THE UNITED STATES, ET AL., APPELLEE

No. 9041, April Term, 1946, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twelfth day of June, A. D. 1946.

[SEAL] (S) JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

32 In the Supreme Court of the United States of America

No. 9041. October Term, 1945

ROBERT P. PATTERSON, SECRETARY OF WAR OF THE UNITED STATES, AND EDWARD F. WITSELL, THE ADJUTANT GENERAL OF THE UNITED STATES ARMY, PETITIONERS

v.

JAMES JOHN LAMB, RESPONDENT

Stipulation

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled case that:

1. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

a. Joint Appendix to appellant's brief.

b. The proceedings had before the United States Court of Appeals for the District of Columbia as set forth in the Designation of Record filed by the Petitioner (the Clerk may by proper note show the substitution of parties which occurred during the pendency of the case in the Court of Appeals instead of printing the orders authorizing such substitution).

2. Petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia to file with the Clerk of the Supreme Court the entire transcript of record in the Court of Appeals for the District of Columbia, and any of the parties may

refer in their briefs and arguments to said transcript of record, including any part which has not been printed.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

JUNE 4, 1946.

Samuel T. Ansell,
SAMUEL T. ANSELL,
Attorney for Respondent.

JUNE 4, 1946.

33 Supreme Court of the United States

Order allowing certiorari

(Filed October 14, 1946)

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1946